

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20528
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On July 3, 2007, the Tax Discovery Bureau of the Idaho State Tax Commission (Bureau) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed use tax for the tax period 2005 in the total amount of \$493. The taxpayer timely filed an appeal and petition for redetermination on September 4, 2007. The taxpayer did not respond to requests for additional information regarding this protest. The Commission has reviewed the file and is advised of its contents and hereby issues its decision.

The facts as determined by the Bureau indicate that the taxpayer purchased [Redacted] totaling \$8,624.33 from an out-of-state retailer and had them shipped to Idaho. The taxpayer did not pay sales or use tax to any state on this transaction. On May 21, 2007, the staff sent the taxpayer a letter requesting her to provide information about the transaction and offer any evidence showing she paid sales or use tax. The taxpayer did not respond to this letter. Thus, on July 3, 2007, the staff issued a Notice of Deficiency. On September 4, 2007, the taxpayer timely protested contending the Tax Commission had no jurisdiction over her contract. She requests that the Tax Commission prove to her the basis of its claimed jurisdiction and provide any statutory law or contract that gives the Commission any authority with respect to her contract with the seller of the merchandise. After receiving the protest, the Commission gave the taxpayer the opportunity to have a hearing or provide any additional documentation or legal arguments to assist her in her protest. She did not respond to this opportunity.

The taxpayer does not dispute the facts set forth in the Notice of Deficiency. The only issue that needs to be addressed is whether the Tax Commission's staff has the authority to issue a Notice of Deficiency once it discovers that a taxpayer may have a tax liability. Since the Notice asserted a use tax liability, the appropriate starting point is the Idaho Sales and Use Tax Act, codified at Idaho Code § 63-3601 et. seq. Idaho Code § 63-3621 provides the following:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability to which the receipt refers.

Thus, the taxpayer is liable for the use tax on the purchase of her property. She does not contend that she paid tax on the purchase to the retailer. Idaho Code § 63-3624 gives the Commission the right to assert the tax due through a Notice of Deficiency. Specifically, subpart (h) provides that:

[w]hen the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of the storage, use, or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter.

Based on this statute, the Bureau had the legal authority to issue a notice of deficiency asserting liability for the use tax, and the Commission will uphold the notice.

WHEREFORE, the Notice of Deficiency Determination dated July 3, 2007, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following use tax, penalty, and interest for the tax period 2005:

<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
\$431	\$22	\$53	\$506

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.